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# IRAQ

## Iraq's Brutal Decrees Amputation, Branding and the Death Penalty

### SUMMARY

Beginning in June 1994, the government of Iraq issued at least nine decrees that establish severe penalties, including amputation, branding and the death penalty for criminal offenses such as theft, corruption, currency speculation and military desertion. These new decrees greatly impinge on individual human rights and constitute violations of several international human rights conventions and standards.

The government of Iraq attempts to deflect international criticism of this cruelty by maintaining that the decrees were enacted to combat rising crime which, it says, is due to the poverty and desperation brought on by international economic sanctions. By implying that if sanctions are lifted and the situation improves the decrees could be repealed, Iraq appears to use these abuses as leverage for the lifting of sanctions. While arguing that the decrees serve as a deterrent to crime, the government has offered no information that they are serving this purpose.

The government of Iraq also maintains that the decrees are based on *Sharia*, Islamic law. *Sharia*, however, is subject to various interpretations, and the Iraqi government's interpretation reflects its political agenda. The repressive political climate within Iraq prevents discussion by Iraqis about other interpretations. Moreover, Muslims outside Iraq hold views regarding the use of amputation under Islamic law that conflict with Iraq's interpretation.

The penalty of amputation is now applied to theft, forgery, currency speculation, military desertion and draft-dodging. Reports from Iraqi news media indicate that the sentence of amputation has been carried out on several individuals convicted of theft. One victim was displayed on Iraqi government television recuperating in the hospital after his hand had been cut off. For deserters and draft-dodgers the ear is amputated.

Under criticism from veterans' groups complaining that amputees convicted of criminal offenses would be confused with the large number of Iraqi veterans who lost limbs during military service, the government began branding the foreheads of amputation victims to distinguish them from war casualties. Often without anesthesia, the figure of a cross is burned into the victim's forehead. Nizar Hamdoon, Iraq's ambassador to the United Nations, told Human Rights Watch/Middle East that several hundred amputations and brandings had been carried out as of November 1994. There have been several reports that doctors have been imprisoned and even executed for refusing to perform punitive amputations and brandings. The government defends amputations as an improvement over its former policy of execution for military deserters. Human Rights Watch/Middle East challenges the suggestion that the only options are death or mutilation.

An individual found guilty of armed robbery or committing theft as a member of the military or as a state employee may be executed. Persons convicted of smuggling antiquities or organizing prostitution may also be sentenced to death. Any person who deserts military service three times may be executed. Since the most recent United Nations report about human rights in Iraq, in February 1995, the Iraqi government has sentenced to death at least a dozen persons in two separate proceedings. The Iraqi government tried these persons before specialized courts which tend to afford few due process guarantees, including a judiciary independent of influences by the government.

These penalties violate international human rights law in many respects. First, they are cruel and inhuman punishments, prohibited under the International Covenant on Civil and Political Rights, to which Iraq is a party. In addition, these punishments have been applied retroactively. Finally, the great expansion of offenses covered by the death penalty also eviscerates the spirit and principle of the International Covenant on Civil and Political Rights.

## RECOMMENDATIONS

Human Rights Watch/Middle East urges the Iraqi government to suspend the implementation of these decrees employing capital punishment, amputation and branding. All criminal defendants should receive adequate procedural safeguards at both the trial and appellate levels.

Human Rights Watch/Middle East calls on governments and private corporations seeking to renew diplomatic and commercial ties with the Iraqi government to advocate an end to these decrees independent of their position regarding economic sanctions.

The Iraqi government should permit Max Van der Stoep, the U.N. special rapporteur for human rights in Iraq, to enter the country so that he and his staff can perform their investigative work. It should also consent to the special rapporteur's proposal for the establishment of human rights monitors throughout the country to provide a safeguard for the general population.

## BACKGROUND

Since the Arab Ba'ath Socialist Party came to power in 1968, the Iraqi government has used terror through various levels of police, military and intelligence agencies to control and intimidate Iraqis. Two decades of oppression against Iraq's Kurds culminated in 1988 with a campaign of genocide, including the use of chemical weapons attacks, against Kurdish civilians. The Ba'athist Sunni Muslim minority has repressed the Shi'a population, including the Marsh Arabs in the south. After the Gulf War, the use of state terror to control the population intensified. For example, thousands of Marsh Arabs have fled to Iran because Iraq has drained the marsh regions and sent in the military with tanks to shell and burn villages. Given the history of a fundamental lack of respect of human rights in Iraq, Human Rights Watch/Middle East is concerned about both the severity of the decrees and the number of people victimized by them.<sup>[1]</sup>

Compounding the abusiveness of the new decrees is the fact that the Iraqi legal system suffers from a lack of adequate due process and judicial review.<sup>[2]</sup> The Revolutionary Command Council (RCC) issued the decrees pursuant to its constitutional power to promulgate laws and decrees. Saddam Hussein presides over this body of nine members, which in turn selects both the president of the republic and the council of ministers. Currently, Saddam is both the president of the republic and its prime

minister.

Although it is very difficult generally to obtain independent and first-hand information about the human rights situation in Iraq, the government has released a large amount of official information on this subject. The decrees were published in the *Official Gazette* as well as several state-controlled newspapers, and the government-controlled news media have publicized the carrying-out of sentences against specific individuals. Reports by journalists and opposition leaders corroborate stated official government policy.

The RCC has explained that these decrees are based on Islamic law and intended to combat rising crime in Iraq.<sup>[3]</sup> Despite the government's arguments that the decrees are based on religious law and necessitated by rampant crime, Iraq is bound by its international obligations not to institute cruel, inhuman, or degrading treatment or punishment. Ambassador Hamdoon said that "the measures were not human rights abuses, . . . They are temporary measures that have to do with the current circumstances. . . . When the economic sanctions are lifted (by the United Nations), there will be no need for such measures."<sup>[4]</sup> The Iraqi permanent mission to the United Nations in Geneva issued a reply to Special Rapporteur Van der Stoel's November report. The mission maintained that "the absence of any deterrent punishments . . . even the severest punishment of the death penalty was no longer adequate or a deterrent. It was these circumstances that prompted the search for deterrent punishments of a purely preventive and protective nature, which will be abolished when the time is appropriate."<sup>[5]</sup> Difficult economic conditions that have caused a rise in crime and military desertion cannot justify Iraq's violation of its citizens' basic human rights.

Both legal and human rights observers decry Iraq's lack of due process of law and compromised judicial procedures. The ICCPR requires that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal."<sup>[6]</sup> These standards are routinely ignored in Iraq. For example, a doctor who fled to northern Iraq told journalists, "Deserters are sent to us [for amputation] by a military court, they go to jail and are tried afterwards."<sup>[7]</sup>

In February 1994, Special Rapporteur Van der Stoel issued a report on human rights in Iraq in which he criticized the lack of due process guarantees, including an independent judiciary. He reported that "as a matter of both law and policy, the judiciary is wholly subservient to and dependent upon an unaccountable executive in the institutions of the Revolution[ary] Command Council and the President of the Republic."<sup>[8]</sup> He cited several examples of interference by the executive branch in judicial functions, including three separate decrees suspending "legal proceedings against persons accused of major offences (including murder) and order[ing] their release without giving any specific reasons."<sup>[9]</sup> The International Commission of Jurists stated, "The overwhelming majority of these administrative decrees, which even frequently contradict the principles contained in the Iraqi Constitution itself, in effect erode the notion of the Rule of Law."<sup>[10]</sup>

Special Rapporteur Van der Stoel was also extremely critical of special and emergency courts. According to his report, these "tribunals usually consist of military officers or civil servants with no legal training; the trials are normally conducted *in camera*, rather than in open court, and the defendants are not permitted free and unsupervised contacts with their lawyers."<sup>[11]</sup> A fair trial requires access to counsel of one's own choosing and ample facilities to make the service of counsel effective.<sup>[12]</sup> Human Rights Watch maintains that special and emergency courts are a violation of due process in any and all circumstances, because they violate the independence and impartiality of the court, which is the most basic due process requirement.

Human Rights Watch/Middle East finds the procedural safeguards wholly inadequate and, therefore, violative of human rights. Human Rights Watch/Middle East has obtained records of trials from two criminal cases involving theft, but has no evidence that any trials for those individuals punished for desertion or draft-dodging have taken place. For example, ear amputations were conducted at Baghdad's Adnan Kheirallah Hospital one day after the statute's enactment, which suggests that either there were no trials or trials were held in extreme haste. Furthermore, international law requires that any criminal sentence be subject to judicial review by a higher court.<sup>[13]</sup> Even the best legal systems that promote the rule of law inevitably make mistakes, but the Iraqi judiciary—riddled with institutional flaws—provides few legitimate procedural safeguards. Amputation, branding and death are inherently irreversible; mistakes which inevitably occur given the lack of due process, cannot be

remedied.

## AMPUTATION

Amputation, never before featured in Iraqi law, is now the penalty for robbery, desertion, and corruption.

### The Decrees

On June 4, 1994, the RCC issued Decree Number 59 introducing amputation as a punishment for robbery or theft. First-time offenders convicted of stealing cars and other property valued over 5,000 dinars (approximately \$15 on the open market) are punished by having their right hand amputated. Under Decree Number 59, a second conviction for theft may result in the amputation of the left foot.<sup>[14]</sup>

Soon afterwards, Iraq added corruption and currency speculation to the list of crimes to be punished by amputation. On July 21, 1994, the RCC issued Decree Number 92, which states: "Whoever forges an official document, whereby this forgery leads to gaining an illegal benefit for himself or preventing others from enjoying their rights, shall be punished by life imprisonment or amputation of the right hand."<sup>[15]</sup>

Appealing to Koranic language and Islamic law, President Hussein proclaimed: "Unauthorized money-changers, farmers who hoard grain and trading speculators 'should be considered as thieves' and have their hands chopped off if caught."<sup>[16]</sup> Decree Number 74 authorized the state to take several actions against moneychangers. The most significant is the "amputation of the right hand from the wrist and amputation of the left foot from the joint in the case of repetition."<sup>[17]</sup> If a moneychanger's acts constitute "an act of sabotage against the national economy, which is extremely harmful to the public interest, they [government officials] may refer the accused to the competent court so it can take the measures against him according to the law."<sup>[18]</sup> In addition to imposing a punishment that clearly violates international human rights laws against torture and cruel punishment, this decree's language is overbroad and ambiguous, permitting the government to take action against almost any moneychanger.

Since the end of the Iran-Iraq war and through the Gulf War, Iraqi troops have become increasingly discontented. Currently, a soldier's salary is insufficient to cover his basic expenses, and army units often lack enough food to feed their troops.<sup>[19]</sup> As a result, desertion and absenteeism had become chronic problems, which the government hoped to resolve by imposing extreme penalties, including amputation.<sup>[20]</sup>

Initially, the government decreed that the punishment for desertion would be the amputation of the hand, but war veterans protested, pointing out that veterans who lost limbs during military service could be mistaken for deserters. Conceding to the veterans' protests, the government instituted branding of the forehead in order to set criminals apart. As a further concession, the government decided to amputate the deserter's ear instead of his hand. Decree Number 115, issued on August 25, 1994, established "that the outer ear will be cut off of anyone found in the criminal act of shirking or deserting military service, or anyone providing shelter for the shirker or deserter, and that the other ear will be cut off of those who commit these crimes again."<sup>[21]</sup> Emergency forces conduct raids to arrest deserters, after which they are sent to special detention camps where the mutilations often take place.<sup>[22]</sup>

Decree Number 115 is vague as to how much of the ear doctors should amputate. Many doctors have taken advantage of this ambiguity and have cut off as little as possible. Some doctors have surgically reattached ears and disguised the brandings on foreheads.<sup>[23]</sup> Determined to thwart these humanitarian efforts, the RCC issued Decree Number 117 on August 25, making it illegal for doctors to perform plastic or corrective surgery on victims in order to ameliorate the amputation or branding.<sup>[24]</sup>

### Cases

Reliable information about the human rights situation in Iraq is extremely difficult to obtain, since the government does

not allow national human rights groups to operate in Iraq and refuses to permit access to outside human rights monitors. While these restrictions have hampered the collection of detailed information, the existence of the decrees and their implementation have never been disputed. The Government of Iraq has not only published the decrees and acknowledged that these punishments are occurring, it has publicized them in the state-controlled media in an apparent attempt to instill fear and send warnings. An article in the state-run newspaper *Al-Thawrah* reported that two soldiers' ears were cut off and their foreheads branded for desertion in early September.<sup>[25]</sup> On September 7, 1994, the state-run newspaper *Al-Jumhuriyah* reported that a man's hand was amputated in the Babil Governorate after he was convicted of robbing a house.<sup>[26]</sup>

In November 1994, Ambassador Hamdoon told Human Rights Watch/Middle East that several hundred persons had been subjected to amputations and brandings. He also stated that the Iraqi government maintains that amputating ears and branding foreheads of deserters is more humane than the previous policy of executing them.<sup>[27]</sup>

Listed below are five cases from a variety of different sources illustrating Iraq's use of amputation.

- In June 1994, Aziz Sa'd Dahash and Nadir Ali Fulayyih were convicted of stealing carpets from the Bahriz al-Kabir mosque northeast of Baghdad on January 20, 1994 and sentenced by the criminal court in Diyala to have their hands amputated.<sup>[28]</sup> According to Amnesty International, the amputations were carried out in July.<sup>[29]</sup>
- Hassan Abdul Allah Hassan discussed the details surrounding his ear amputation in an interview with the Iraqi Broadcast Corporation. According to Hassan, the Iraqi authorities imprisoned him and other deserters in a cramped hall that was too small to hold all of them. As they waited for the procedure, some persons went insane, others committed suicide. Hassan received anesthesia before a doctor performed the ear amputation. Afterwards, his wound began to bleed profusely, but the doctor did not give him any medicine to control or stop the bleeding. When all the amputations had been performed the victims were returned to prison. During the interview, Mr. Hassan removed his hat to show that the fleshy top portion of the ear had been cut in a forty-five-degree angle.<sup>[30]</sup>
- A physician who worked in a Baghdad military hospital before fleeing to Iraqi Kurdistan in October 1994, estimated that 1,700 amputations had been performed for desertion between August and mid-September 1994.<sup>[31]</sup> This doctor reported that the procedures were often performed without anesthesia and that the risk of infection was very high because of the poor hygienic conditions.<sup>[32]</sup>
- An Iraqi soldier arrested with five others and taken from Kirkuk to Mosul told the Iraqi National Congress the group spent five days in a prison where they were beaten and tortured before being taken to a hospital where he was tied to the bed and given anesthesia before the doctors amputated his ear. According to this man, the amount of anesthesia an individual receives varies inversely to the amount of trouble that the person caused the government. Therefore, a person who escaped more often and remained absent for longer periods received less anesthesia.<sup>[33]</sup>
- On October 8, 1994, a number of persons in Baghdad had their ears amputated for desertion, including Ali Hussein Lefta Ashoov, Tariq Audah, and Mohammed Hassaballah.<sup>[34]</sup>

Although it is difficult to estimate the total number of persons who have suffered, Iraq has implemented these penalties throughout the country. Agence France Presse reported in September 1994 that at least 780 soldiers allegedly had their earlobes amputated and their foreheads branded as a punishment for desertion and draft-dodging.<sup>[35]</sup> On August 24, 1994, Mohammad Hassan and Salam al-Elebawi were among several victims whose ears were amputated in the southern city of Amarah.<sup>[36]</sup> On August 26, 1994, twelve individuals suffered amputation of their ears at the Adnan Kheirallah Hospital in Baghdad.<sup>[37]</sup>

The government maintains that the economic sanctions have forced Iraq to ration medical supplies and require victims to pay for anesthesia, when it is available, before amputating their limbs. A number of people have died following amputations.

- Max Van der Stoel, special rapporteur on Iraq for the U.N. Commission on Human Rights, reported that in southern Iraq two men, "Hassan Ali Kadhim and Khaz'al Abid Mansour, both of the city of Nasiriya, died after 10 days of head and chest inflammation that followed the amputation of their ears," and a man from the northern city of Mosul died from

severe blood loss after the amputation.<sup>[38]</sup>

- In October, British Member of Parliament Emma Nicholson returned from Iraq's southern marsh region and reported that at least one person bled to death immediately as a result of an ear amputation, because he suffered from hemophilia.<sup>[39]</sup> Other persons developed infections after the procedure and became ill or died, due in part to lack of medication.<sup>[40]</sup>

In addition to these fatalities, some victims committed suicide after suffering amputations. One man allegedly committed suicide outside the hospital in Mosul after his ear was amputated. A group of ten soldiers incarcerated at Mansoryat al-Jabal prison in Diyala Governorate reportedly committed suicide after their ears were amputated and foreheads branded. Their wounds had become infected, and they could not obtain medical care.<sup>[41]</sup>

Amputations and branding, by requiring the participation of a physician, have created a serious ethical dilemma for Iraq's medical community. Reports indicate that many Iraqi doctors refuse to perform amputations in spite of government warnings to comply. The government threatened to imprison doctors who planned to protest against the use of amputation and branding. Doctors in Baghdad, Kirkuk, and Basra, and elsewhere have been arrested for refusing to perform the amputations.<sup>[42]</sup>

- "Two well-known Baghdad doctors, Abbas Qalander and Hahreen Yousif [of the Baghdad Health Department], disobeyed the order and were detained."<sup>[43]</sup>
- In December 1994, local authorities arrested Dr. Rabih Abdul Haddi, Dr. Yahya Rejab al- Khafaji and Dr. Issam from the southern town of al-Nasiriyah, as well as sixty medical students from Basra, for their stance against amputation.<sup>[44]</sup>
- Amnesty International reports that nine doctors were arrested after they refused to perform amputations.<sup>[45]</sup>
- In September 1994 in Baghdad, Dr. Amjad al-Timimy and Dr. Hatim Abdul Waheed of al-Kadimia Hospital and Dr. Sami Hashim al-Jawmaily of Ali Hospital were arrested for performing cosmetic surgery on amputation victims.<sup>[46]</sup>

A journalist reporting from northern Iraq stated that some doctors had even been executed for refusing to perform amputations.<sup>[47]</sup> Other reports indicate that a doctor in Nasiriyah at Saddam Hospital and the director of al-Basra Military Hospital were executed for refusing to perform the procedures.<sup>[48]</sup>

Protest has spread beyond doctors, however. According to the *The Times*, riots broke out in the southern city of Amarah on September 12, 1994 when a crowd gathered to protest the new punishments. An angry mob attacked several Ba'ath Party officials and cut off their ears.<sup>[49]</sup>

### **Violations of International Human Rights Law**

The punitive use of amputation violates human rights law prohibiting torture and cruel punishment. Iraq acceded to the International Covenant on Civil and Political Rights (ICCPR) in January 1971. Article 7 of the covenant states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."<sup>[50]</sup>

The U.N. General Assembly has defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed."<sup>[51]</sup> With General Assembly Resolution 3452, international legal scholar Robert Lillich maintains, "The United Nations not only condemned but for the first time authoritatively defined both 'torture' and 'cruel, inhuman or degrading treatment or punishment.' Thus it would be difficult today to contend that torture, at the very least, does not constitute a violation of customary international law."<sup>[52]</sup>

This extends the definition of torture to include acts such as amputation, because it is an act that causes severe pain and is inflicted by a government official with the intent to punish. The disfigurement it inflicts is a violation of physical integrity, as well as becoming a source of mental suffering inasmuch as the victims are permanently stigmatized in society. These penalties, therefore, constitute torture under the General Assembly's definition. Reports that some amputation victims have committed

suicide underscore the severe and long-term cruelty of the punishment. Since some of the crimes that result in branding or amputation are relatively minor offenses, these penalties are also grossly disproportionate in relation to the crime.

The ICCPR permits states to derogate from their obligations under the covenant during "time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed."<sup>[53]</sup> Ambassador Hamdoon's arguments, however, that are intended to justify the decrees as a necessary step to deal wi